

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch**

**Ruizenor Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0210295**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Ruizenor Market (Appellant) by the Retailer Operations Division (Retailer Operations).

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a), 7 CFR § 278.6(e)(1)(i) and 7 CFR § 278.6(i) in its administration of the SNAP when it imposed a permanent disqualification against Appellant.

**AUTHORITY**

7 U.S.C. § 2021 and the implementing regulations at 7 CFR § 279.1 provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 may file a written request for review of the administrative action with FNS.

**CASE CHRONOLOGY**

By Charge letter dated October 7, 2019, Retailer Operations informed the owners that Appellant was charged with violating the terms and conditions of the SNAP regulations based on a USDA investigation conducted from May 9, 2019 through August 29, 2019. The record shows a written reply by one owner to the Charge letter dated October 17, 2019.

By Determination letter dated October 23, 2019, Retailer Operations informed Appellant that it was permanently disqualified from participation as a retail store in the SNAP, and that the store was not eligible for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) because the firm failed to submit evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

The owners appealed Retailer Operations' determination and requested administrative review by email dated November 4, 2019. The appeal was granted by letter dated December 26, 2019. An unknown individual sent an email with an unsigned letter attached dated January 15, 2020, with the name of one owner.

## **STANDARD OF REVIEW**

In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of the evidence that the administrative actions should be reversed. That means the Appellant has the burden of providing credible, relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true.

## **CONTROLLING LAW AND REGULATIONS**

The controlling statute in this matter is in the Food and Nutrition Act of 2008, as amended (the Act), 7 U.S.C. § 2021, and § 278 of Title 7 of the Code of Federal Regulations (CFR).

7 U.S.C. § 2021(b)(3)(B) states: "...a disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards..."

7 CFR § 278.2(a) states: "Coupons may be accepted by an authorized retail food store only from eligible households or the households' authorized representative, and only in exchange for eligible food."

7 CFR § 278.6(e)(1)(i) states: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in §271.2." Trafficking is defined, in part, in 7 CFR § 271.2, means: "(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone."

7 CFR § 278.6(b)(2)(ii) states: "Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS

information and evidence . . . that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).”

7 CFR § 278.6(i) states: “FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking . . . if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

### **SUMMARY OF THE CHARGES**

The USDA conducted an investigation of Appellant. The investigative report details the results of seven compliance visits. Appellant was charged with trafficking in Exhibits F and G. The penalty for trafficking is permanent disqualification. On multiple visits, the Exhibits also show that Appellant sold ineligible nonfood items in violation of Section 278.2(a) of the SNAP regulations. The items included: window cleaner, laundry soap, dishwashing liquid, shampoo, bath tissue, and cleanser.

### **APPELLANT’S CONTENTIONS**

In reaching a decision, full attention and consideration have been given to all contentions presented, including any not specifically recapitulated.

- About a year ago, three men came to our shop asking for money for the wright [sic] of having the store and I asked them what it was all about and they told us that if we did not pay money for “floor rights” or for them to take care of our store, “they call floor right” they would retaliate against us.
- We told them that the store did not produce much profit and that we could not make that kind of payment to them, so one of the men told us to exchange food stamps for money.
- They also told us that they were going to be sending people who worked for them and that we had to exchange stamps for money and that we shouldn’t ask any questions or we would have to stick to the consequences.
- They have long sent all kinds of people, men women, children of all ages and I had to exchange stamps or what they wanted for fear of being hit or hurt even to kill us.
- I talked to the police about it because they also came to steal in some occasions these same people stole beer but the police recommended that I do nothing about it, not to report them because then I would have to go to court and identify them and the court only gave them little time and after they got out it would be worse for us.
- I fear for our lives, but I know that I made a mistake in doing what these individuals want us to do and I did not have to accept their requirements but it is not easy when one is on the other side of the situation.
- I am having issues with the punishment given to my store. It is unfair and should be given a time sentence instead of a permanent sentence. A mistake was made but was not worth being punished so badly.

- This is just a small business out of many trying to make it. I really how you could reconsider the punishment or look into the issue in hand.
- In effort to correct our actions, we have looked at integrating a system to prevent the misuse of the SNAP. We came across “Brilliant POS;” the system can be configured to identify which products are eligible for SNAP. If we were to be reinstated to the SNAP program, we will implement this POS system to prevent any misuse of EBT SNAP.

## **ANALYSIS AND FINDINGS**

The purpose of this review is to either validate or to invalidate the decision of Retailer Operations. It is limited to the facts at the basis of Retailer Operations’ determination at the time it was made. The regulations establish that an authorized retail food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner(s), manager(s), or someone acting on their behalf. Regardless of whom the owner(s) of a store may utilize to handle store business, the owner(s) is accountable for the proper handling of SNAP benefit transactions.

Exhibits F and G give the details of the trafficking violation at Appellant when a firm employee exchanged cash for SNAP benefits. Violations of the sale of ineligible nonfood items by other personnel were cited in other Exhibits in the record. The sale of nonfood items carries a penalty of term disqualification which is subsumed under the permanent disqualification penalty for trafficking.

The responding owner’s reply to the Charge letter did not refute the charge of trafficking nor was evidence advanced to refute the charges. The regulations stipulate “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in §271.2.” Therefore, the preponderance of the evidence supports that the violations occurred as charged and sanctioned.

## **CIVIL MONEY PENALTY**

The regulations at Section 278.6(i) specify the criteria for a firm’s eligibility for a civil money penalty in lieu of permanent disqualification for trafficking. A firm must submit a timely request for a civil money penalty that shows substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations. The record supports that Appellant did not submit substantial evidence for a trafficking CMP in lieu of permanent disqualification. Retailer Operations properly applied the applicable regulations.

## **CONCLUSION**

The preponderance of the evidence supports that Program violations did occur at Appellant. The investigative record is specific and accurate with regard to the dates of the violations. The exchange by store personnel of cash for SNAP benefits is a violation of the regulations at 7 CFR

§ 271.2. Trafficking carries a sanction of permanent disqualification. The sale of ineligible items at Appellant on multiple visits is subsumed in the trafficking violation. The permanent disqualification of Appellant as a SNAP retail food store is herein sustained. The effective date of this decision is 30 after receipt by the store.

### **RIGHTS AND REMEDIES**

Attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and to 7 CFR § 279.7 of the regulations with respect to applicable rights to judicial review of this determination. If a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district where Appellant's owners reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

M. Viens  
ADMINISTRATIVE REVIEW OFFICER

January 21, 2020